

31 January 2024

Joint media statement: Equal Education and Equal Education Law Centre urgently call on government to address problems in the BELA Bill and its swift finalisation

Equal Education (EE) and the Equal Education Law Centre (EELC) have submitted [written comments](#) to the National Council of Provinces (NCOP) on the Basic Education Laws Amendment (BELA) Bill. The NCOP's call for public comment closes today, 31 January, and is likely to be the final round of public participation before the Bill is finalised.

The BELA Bill has been years in the making and has gone through extensive public consultation processes. The purpose of the Bill is to bring laws dealing with schools in line with important developments in the law over the last decade related to the right to basic education. Once finalised, it will bring the most significant changes to basic education laws in the last decade. For the main part, we welcome this belated update to education law. However, we remain concerned that the Bill unjustly criminalises parents. We also believe that urgent improvements are needed regarding the amendments relating to compulsory Grade R and school discipline.

- ***Criminalisation of parents/caregivers who prevent their children from attending school***

The Bill retains the extended jail time—from six to 12 months—for anyone, including caregivers, who prevents a child from attending school without a good reason. It is concerning that the members of the Portfolio Committee paid such little attention to this provision because criminalising parents and caregivers does not solve the underlying reasons why children sometimes do not go to school. In South Africa, many parents may choose not to send their child to school for legitimate reasons, for example, if the school's infrastructure presents a significant health and safety risk to the child. This clause also fails to recognise the potential harm to children should their primary caregiver be incarcerated.

- **Compulsory Grade R**

BELA will make Grade R attendance compulsory. EE and EELC welcome this change as it is likely to improve access to early learning opportunities – including for children with disabilities. However, the framing of the clause is problematic because parents would *immediately* be required to ensure that children in their care “attend school, starting from grade R on the first school day of the year in which such learner reaches the age of six years”. The problem is that public school capacity is seriously limited, with thousands of learners unplaced each year. Currently, many children attend Grade R at ECD centres or other community-based settings. We do not think it would be desirable – at least in the short term – to require that young children must stop attending Grade R classes at ECD centres and must instead be accommodated in already over-crowded schools, with criminal sanctions attached if parents intentionally fail to comply. We think a phased approach to the introduction of compulsory Grade R is vital.

- **School Discipline**

BELA's changes to school discipline are a mixed bag of improvements and new potential problems. On the one hand, we welcome the amendment allowing learners to obtain an exemption from a school's code of conduct. This will help to ensure that school codes of conduct do not discriminate against learners. On the other hand, we are concerned that the new definition of serious misconduct in the Bill will give school governing bodies (SGBs) and Head of Departments (HODs) of provincial education departments broad powers to suspend or expel learners in ways that are disproportionate, unfair and encourage victim-blaming. If a definition of serious misconduct is to be included, it must be clearer and narrower than what is currently contained in the Bill.

- **School Governing Body Powers**

The Bill significantly clarifies the powers of provincial education departments (PEDs) and SGBs regarding school admissions and language policy. It confirms that the HOD of a provincial education department can make the final decision on public school admissions and should oversee SGB decisions on language policies to prevent discrimination. The powers of SGBs regarding school admissions and language policies have been a contentious issue that has resulted in many court cases. The changes align with court rulings on the link between SGBs and PEDs.

We strongly urge the NCOP to address these remaining concerns and, following that, we hope for the swift finalisation of the Bill by Parliament because it has been years in the making and is long overdue.

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To arrange a media interview with Equal Education, please contact Sesethu August (Equal Education Communications Officer) at sesethu@equaleducation.org.za or WhatsApp: 083 890 8723 or Call: 063 221 7983

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